

Article 5(3), an applicant has to show that the police has deliberately and with bad faith obstructed a detainee from exercising his right under the Article.

In the circumstance of the case, having regard to the grounds we have set out earlier, the appeals should be dismissed. But we are not unmindful of our grave responsibility to be between the executive and citizens. We would like to reiterate that we do not abdicate our function and shy away from our responsibilities. It would be very much to be regretted and indeed it would be most unfortunate if the results of these appeals were to be understood as an abdication of our duties. This misunderstanding may arise in view of so many recent adverse comments against the judiciary and the legal system of this country. The court must be neutral and independent. When the law is clear, we must declare what the law is.

In a proceeding like the present one where both the legislation and the executive act under it are challenged, our duties are not to substitute our decision for that of the executive. We are only concerned with the procedural aspects of the exercise of executive discretion. We have no interest, nor desire, to embark upon trespassing into the domains of the legislature or the executive. In a democratic society in which the government is not absolute but a limited one, there is a duty on the part of the executive to act with fairness and follow a fair procedure. Since in these appeals, the law is clear, despite the fact that it is much criticized both at home and abroad, our decision cannot be otherwise than what we have said earlier. We made this observation because we feel that we owe a duty to the public to put our position on record in view of so many adverse comments made against us.

The appeals are therefore dismissed.

Appeals dismissed.

Solicitors: *Zain & Co., Ngeow & Maurice Gomes.*

EASOW PLANTATIONS SDN. BHD. v. MOSBERT BERHAD (IN LIQUIDATION)

RANJIT SINGH v. JET AGE CONSTRUCTION SDN. BHD.

[S.C. (Salleh Abas L.P., Abdul Hamid C.J. (Malaya) & Lee Hun Hoe C.J. (Borneo)) December 9 & 30, 1987]

[Kuala Lumpur — Supreme Court Civil Appeals
Nos. 40 and 111 of 1987]

Land Law — Caveat — Caveat limited to area of land claimed — Sale of subdivided lots to various purchasers — Subsequent sale of whole land — Caveat by individual purchasers — National Land Code, s. 323(2).

In this case, Mosbert Berhad, the registered owner of a large piece of land in Johore Bahru, had subdivided the land into lots and sold the subdivided lots to various purchasers. After paying for these sublots, the purchasers entered caveats in order to protect their interest in the land. Mosbert Berhad went into liquidation and the liquidator sold the land to a company called Jet Age. In order to enable the land to be registered in their name, Jet Age applied to the High Court to have the caveats removed.

In Civil Appeal No. 40 of 1987, the appellant claimed that it had bought the sublots from another company, Module Construction, but did not say in its application how the other company obtained its interest in the land. The caveat was limited only to the area of the sublots which it claimed. The learned judge of the High Court allowed the application to remove the caveat. The appellant appealed.

In Civil Appeal No. 111 of 1987, the appellant had entered a caveat in respect of the subplot purchased from Mosbert Berhad. The learned judge of the High Court allowed the application for the removal of the caveat. The appellant appealed.

Held: (1) in Civil Appeal No. 40 of 1987, although the caveat was limited to the area of the sublots claimed, the application did not show any connection between Module Construction and the purchaser or Mosbert Berhad. Since the land is vested in Mosbert Berhad, there was a missing link and the order of the learned judge was unassailable. The appeal is therefore dismissed;

(2) in Civil Appeal No. 111 of 1987, the appellant in his application mentioned that he purchased the subplot from Mosbert Berhad and that the caveat was only limited to the area relating to the subplot. The appellant had therefore complied with the law and the caveat should stay. The appeal is therefore allowed.

Cases referred to:

- (1) *Mosbert Berhad (In Liquidation) v. Stella D'Cruz* [1985] 2 M.L.J. 446.
- (2) *N. Vangedasalam v. Mahavevan & Anor.* [1976] 2 M.L.J. 161, 162.

SUPREME COURT.

D.P. Naban for the appellant in Civil Appeal No. 40/87.

Thara Singh Sidhu (Ragbir Singh Gill with him) for the appellant in Civil Appeal No. 111/87.

P. Suppiah for the respondents.

Cur. Adv. Vult.

Salleh Abas L.P. (delivering the judgment of the court):

Civil Appeal No. 40 of 1987

Mosbert Berhad is the registered owner of Lot 83 held under Grant No. 72, Mukim of Plentong, Johore Bahru, with a total area of 113a. 2r. 20p.

Before going into liquidation, Mosbert privately subdivided this land into several sublots each with about 6,000 sq. ft. in area, and sold the subdivided lots to various purchasers. After paying for these sublots the purchasers entered caveats in order to protect their interest in the land.

After Mosbert had gone into liquidation, the liquidator sold the whole land Lot 83 to a company called Jet Age. In order to enable the land to be registered in their name, Jet Age applied to the Johore Bahru High Court to have these caveats removed.

In Civil Appeal No. 40 of 1987, the caveat was lodged by a company called Easow Plantation Sdn. Bhd. in respect of 26 sublots with a total area of 156,000 sq. ft. The application by the liquidator to have the caveat removed was allowed by Shankar J. The ground given by the learned judge was that he was bound by the decision of the Supreme Court in *Mosbert Berhad (In Liquidation) v. Stella D'Cruz*.⁽¹⁾ According to this case, a person claiming only a portion of a piece of land should caveat only a portion of it and if he caveats the whole land such caveat is void and is of no effect.

According to the caveat entry application by Easow, the caveat was limited only to the area of the 26 sublots which it claimed, i.e. 156,000 sq. ft. and not the whole land area, which is 113a. 2r. 20p. Therefore, the application of the *Stella D'Cruz* case should end in Easow's favour. However, there is one material question which Easow had to surmount, in that under section 323 subsection (2), it has to state the nature of the claim on which the application is based. In its caveat entry application (Form 19B), Easow claimed the 26 sublots by virtue of an assignment it took from another company called Module Con-

struction Sdn. Bhd. The application, however, did not say how Module Construction obtained its interest in the land. There is simply no connection between Module Construction and the purchaser or Mosbert Berhad. Since the land is vested in Mosbert Berhad, this missing link, in our view, does not satisfy the requirement of section 323 subsection (2). Hence the conclusion reached by the learned judge is unassailable. We therefore dismiss the appeal with costs and order the deposit to be paid to the respondents towards taxed costs.

Civil Appeal No. 111 of 1987

In Civil Appeal No. 111 of 1987, the caveat was entered at the instance of Ranjit Singh a/l Inder Singh, who purchased one of the sublots from Mosbert Berhad.

Upon application by Jet Age to remove the caveat, Yusoff Mohamed J. allowed the application and ordered the removal of the caveat.

In his caveat entry application (Form 19B), Ranjit Singh s/o Inder Singh mentioned that he purchased the subplot from Mosbert Berhad and that the caveat was only limited to the area of 6,050 sq. ft. relating to his subplot. Thus in effect he had complied with whatever objection that could be found in section 323 subsection (2) of the National Land Code (Act 56 of 1965), and also *Stella D'Cruz's* case⁽¹⁾, as to the effective area of the caveat. What he did is also consistent with the judgment of the Federal Court in *N. Vengadasalam v. Mahavevan & Anor.*⁽²⁾ Hence in his case the caveat should stay. We therefore allow the appeal with costs both here and the court below. We order that the deposit be refunded to the appellant.

Order accordingly.

Solicitors: *Skrine & Co.; P. Suppiah & Co.; Thara Singh, Sidhu & Co.*

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